

Remarks

Claims 1, 3, 7-9, 13, 23-24, 26, 30, 32, 35, 40, 45 and 49 have been amended, claims 37 and 38 have been canceled, and new claims 50-61 have been added.

Claim 45 has been amended to address the objection thereto.

Claims 1-3, 5, 7-10, 12, 14, 15, 26-31, 35, 36, 39, 40, 42, 45, 47 and 49 are rejected as being anticipated by U.S. Pat. No. 2,292,347 to Bailey. Claims 13, 32, 34 are indicated to include allowable subject matter. Accordingly, claims 13 and 32 have been re-cast in independent form to capture the allowable subject matter indicated to be allowable.

Claim 1 specifies that the protective garment includes a pouch coupled to the outer shell, the pouch being shaped and sized to receive generally all the outer shell therein, the pouch including an upper mouth and a lower mouth. In construing the Bailey reference, the Office action has construed the flat sheet 11 of Fig. 1 of the Bailey reference as the claimed pouch. More particularly, as can be seen in Fig. 1 of Bailey, the sheet 11 is coupled to the garment along stitching line 12 and includes a pair of zipper tracks 16, 17 on opposite edges thereof. The sheet 11 can be rolled into a cylindrical shape, as shown in Fig. 3, and the zipper tracks 16, 17 secured together by actuation of a slider 21.

Accordingly, it is submitted that, in the configuration shown in Fig. 1, the flat panel 11 in no way forms or resembles a pouch as claimed in claim 1. However, in order to further distinguish over the Bailey reference, claim 1 has been amended to specify that the pouch is a generally closed shape defining an inner volume. It is submitted that the flat panel 11 of the Bailey reference in Fig. 1 is not a pouch, and is not a pouch as specifically defined in amended claim 1.

Further, it is submitted that Fig. 3 of the Bailey reference cannot be read upon claim 1, given that claim 1 specifies that the outer shell is shaped to fit about the arms, chest, torso and legs of the body of a wearer, and that the outer shell is *foldable* into a compact position. The pouch is specified to be shaped and sized to receive generally all of the outer shell therein when the outer shell is in the compact position. Thus, the garment in Fig. 3 of Bailey is in the compact position, and cannot read upon the garment specified in claim 1.

Finally, claim 1 also specifies that the upper mouth and lower mouth are located on generally opposite sides of the pouch. In contrast, when the pouch of Bailey is in the

configuration shown in Fig. 3, the "mouths" are immediately adjacent to each other and are not on opposite sides of the "pouch."

Claim 1 also specifies that the outer shell is shaped to fit about the legs of a body of a wearer. In contrast, the coat of the Bailey reference appears to be shaped to be fit only about the torso and arms of the body of a wearer. Thus, it is submitted that claim 1 distinguishes over the Bailey reference.

Independent claim 23 has been amended in a manner analogous to claim 1, and is submitted to distinguish over the Bailey reference (when combined with the Hayes reference) as proposed in paragraph 5 of the Office action.

Independent claim 26 has been amended to specify that the outer shell includes a pair of pant legs shaped to fit about the legs of a wearer. In contrast, the Bailey reference merely discloses a coat. In addition, it is noted that claim 13, which is indicated to include allowable subject matter, also specifies that the garment includes a pair of legs (among other limitations). Thus, it is submitted that claim 26 distinguishes over Bailey.

Independent claim 49 has been amended to specify that the upper mouth and the lower mouth are both selectively and independently openable and closable. In contrast, the Office action has construed the upper edge 15 of sheet 11 of the Bailey reference as the claimed upper mouth, and the lower edge 14 of sheet 11 as the claimed lower mouth. As shown in Fig. 3 of Bailey, the edges or "mouths" 14, 15 of Bailey are attachable together. However, the upper and lower "mouths" of Bailey are not independently openable and closable. Instead, any "opening" or "closing" of the "mouths" are dependent and must occur simultaneously and dependently. Accordingly, it is submitted that claim 49 distinguishes over the Bailey reference.

In addition, claim 49 specifies that the outer shell can resist igniting, burning, melting, dripping or separation at a temperature of 500°F for at least five minutes. Claim 49 is indicated to be anticipated by Bailey. At the middle of page 3, the Office action takes the position that the applicant does not provide criticality to specific ranges and therefore the referenced prior art meets the claim limitations. As an initial matter, it is submitted that applicant has, indeed, indicated the importance of the "500° F" claim limitation. For example, at page 1, lines 7-10 of this application, it is noted that protective or hazardous duty garments are widely used to protect the wearer from various hazardous conditions, such as heat, smoke, cold, sharp objects,

chemicals, liquid, fumes and the like. At page 5, lines 9-20, it is noted that each layer of the garment, and the garment as a whole, can be designed to meet N.F.P.A. 1971 standards for protective firefighter garments. It is disclosed that the N.F.P.A. standards specify various minimum requirements for properties of the garments, including having an outer shell of a garment that can resist igniting, burning, melting, dripping and/or separation at 500°F for five minutes. Accordingly, these properties are desired to protect the wearer and to ensure the garment meets N.F.P.A. standards. Thus, the "500°F" limitation is not arbitrarily selected, but can be an important property for firefighting garments.

Furthermore, even if it can be shown that the application did not provide any "criticality," for these specific ranges, such a failing does not mean that the prior art meets the claim limitations. In this case, the Office action does not show any prior art reference that teaches or suggests all the claim limitations which, as specified in MPEP §2142, is a minimum requirement for rejecting a claim over the prior art.

A failure to provide criticality, even if it were to be the case, does not mean a prior art reference discloses the claim limitation. Instead, anticipation must be determined by the disclosure of the Bailey reference itself. Accordingly, it is submitted that amended claim 49 distinguishes over the Bailey reference.

Thus, it is submitted that each of the independent claims (claims 1, 13, 23, 26, 32 and 49) distinguish over the cited art. Without acceding to the propriety of the rejection of the dependent claims that are not specifically addressed herein, the rejection of various dependent claims are both discussed below. For example, it is noted that claims 15 and 36, which depend from claims 1 and 26 respectively, each include the "500°F" limitation discussed above in the context of claim 49.

Claim 7 depends from claim 1 and specifies that the pouch is fixedly coupled to the outer shell generally around the entire perimeter of the upper mouth. However, the only place in which the sheet 11 of Bailey is attached to the body of the garment of the Bailey reference appears to be along stitching line 12. In contrast, the upper edge 15 of the sheet 11, which has been construed as the upper mouth, is not fixedly coupled to the outer shell along any of its "perimeter." In any case, claim 7 has been amended to specify that the mouth is a generally

closed loop shape which further distinguishes over the straight line shape of the upper edge of sheet 11.

Claim 8 has been amended to further clarify the inverted configuration specified therein.

Claim 9 has been amended to specify that the pouch is configured as a generally tubular sleeve when the upper mouth and the lower mouth are entirely open. In contrast, in the Bailey reference, when the upper mouth and lower mouth are entirely open, the "pouch" is configured as a flat piece of sheet-like material 11.

Claim 40 depends from claim 1 and specifies that the upper mouth and lower mouth communicate with each other via the inner volume of the pouch. In contrast, given that the panel 11 of the Bailey reference is not a pouch, and the panel 11 cannot include any "mouth," it can be further seen that the Bailey reference lacks any "mouths" that "communicate with each other via an inner cavity."

Claim 41 specifies that the pouch is coupled to a front portion of the outer shell. Claim 41 is rejected over Bailey in view of U.S. Pat. No. 4,476,587 to Itoi. The Office action takes the position that it would be obvious to one of ordinary skill in the art to place the "pouch" of Bailey on the front of the garment so that it can be more easily accessed. However, it is submitted that one of ordinary skill in the art would not be motivated to move the sheet 11 of the Bailey reference to one of the front panels of the garment. In particular, as can be shown in Fig. 1 of Bailey, the sheet 11 would not appear to fit onto either the right front or left front panels. This placement of the sheet 11 would also appear to make it impractical to roll the garment into the sheet 11.

New claim 50 specifies that the upper mouth defines a closed loop shape, and that the lower mouth defines a closed loop shape. In contrast, the "mouths" 14, 15 of the sheet 11 of the Bailey reference are upper and lower edges of the sheet 11 and do not define a closed loop shape in the manner of the mouths of the pouch of claim 50.

New claim 51 depends from claim 1 and specifies that the garment includes a pair of legs. In contrast, as described above, the coat of the Bailey reference does not appear to disclose a pair of legs.

New claim 52 specifies that the upper mouth and lower mouth are both independently openable and closable relative to each other. In contrast, as described above, the upper and

lower "mouths" 14, 15 of the Bailey reference are attachable to each other, and are therefore not independently openable and closable.

New claim 53 specifies that the pouch is generally tubular, as contrasted with the flat panel 11 of Bailey. In addition, as noted above in the context of claim 1, the pouch of Fig. 3 of Bailey is not readable upon claim 1 since the garment in Fig. 3 of Bailey is in a compact position, and since claim 1 specifies that the upper mouth and lower mouth are located on generally opposite sides.

New claims 54-61 depend from claims 23, 26 and 49 and add limitations similar to claims already discussed above.

Accordingly, it is submitted that the application is now in condition for allowance and a formal notice thereof is respectfully solicited.

It is noted that the Office action includes copies of the references submitted by the Applicant in various Information Disclosure Statements. The foreign references, namely, FR 2,594,009, GB 2,333,949 and JP 1,0192,028 have been initialed by the Examiner, but are also struck-through. The undersigned spoke with the Examiner via telephone on October 17, 2006, and the Examiner indicated that these references have in fact been received and considered by the Examiner, and they should not have been struck-through. The undersigned indicated that this conversation would be noted in this Amendment, and would request confirmation that these references have in fact been considered. Accordingly, it is requested that the Office provide confirmation that these foreign references have been considered.

The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or to credit any overpayment to Deposit Account 20-0809. Applicant hereby authorizes the Commissioner under 37 C.F.R. §1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension.

Respectfully submitted,



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